

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION**

KENNETH CARDWELL,

Plaintiff,

v.

DR. DWAYNE AYERS, ET. AL.,

Defendants.

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1:06-CV-31 (WLS)

**ORDER**

Before the Court is a Report and Recommendation from United States Magistrate Judge Richard L. Hodge (Doc. No. 49), filed August 6, 2007. It is recommended that Defendants' motion to dismiss be denied without prejudice as Defendants have subsequently filed a motion for summary judgment. Neither Plaintiff, nor Defendants, have filed a timely objection.

Upon full consideration of the record, the Court finds that said Recommendation should be and hereby is, **ACCEPTED, ADOPTED** and made the order of this Court for reason of the findings and reasons set out therein. Accordingly, Defendants' motion to dismiss (Doc. No. 28) is **DENIED without prejudice**.

SO ORDERED, this 28<sup>th</sup> day of August, 2007.

/s/W. Louis Sands  
**W. Louis Sands, Judge**  
**United States District Court**